

STATE OF MICHIGAN
COURT OF APPEALS

DAVID M. DELANEY,

Plaintiff-Appellant,

v

BOARD OF STATE CANVASSERS and
SECRETARY OF STATE,

Defendants-Appellees.

UNPUBLISHED

June 16, 2016

No. 333410

Ingham Circuit Court

LC No. 16-000440-AA

Before: METER, P.J., and BORRELLO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order denying his request for mandamus in this election case. We affirm.

On April 18, 2016, plaintiff timely filed a nominating petition to become a candidate for the open position of 46th Circuit Court Judge in the August 2, 2016 primary election. The petition comprised twenty-two nominating petition sheets and 223 signatures. In the headings of two of the nominating petition sheets, plaintiff's address was incomplete. The sheets included only plaintiff's 4-digit house number, "2839," without his street name, "Abbey." Defendants rejected the signatures on those sheets, explaining: "On two petition sheets in the 'Street Address or Rural Route' field, the candidate wrote only, '2839____,' omitting a street name or rural route." As a result, plaintiff's nominating petition had only 184 valid signatures, short of the 200 signatures required to qualify for placement on the primary election ballot.

Plaintiff filed a complaint for a writ of mandamus. He asked the trial court to compel defendants to certify his nominating petition and place his name on the August 2, 2016 primary election ballot. The court denied the request. The court determined that plaintiff's failure to include his complete address in the heading of his nominating petition was a fatal defect under MCL 168.544c(1), and the Board had no clear duty to certify the petition.

We review a trial court's grant or denial of a writ of mandamus for an abuse of discretion. *Wilcoxon v City of Detroit Election Comm*, 301 Mich App 619, 630; 838 NW2d 183 (2013). Although the underlying question whether the writ should issue is reviewed for abuse of discretion, we review de novo as questions of law whether a defendant has a clear legal duty to perform and whether a plaintiff has a clear legal right to performance. *Id.*; *Barrow v Detroit Election Comm*, 301 Mich App 404, 411; 836 NW2d 498 (2013).

Michigan election law allows an individual who filed a nominating petition and is aggrieved by a decision of the Board of Canvassers to seek mandamus relief. MCL 168.552(12); *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 502; 688 NW2d 847 (2004). A plaintiff has the burden of establishing entitlement to the extraordinary remedy of a writ of mandamus. *Wilcoxon*, 301 Mich App at 632. The plaintiff must show that (1) he has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy. *Id.*

Nominating petitions for elective offices “shall be on a form prescribed by the secretary of state[.]” MCL 168.544d. A nominating petition must include the candidate’s address. MCL 168.544c(1) governs the form and content of a nominating petition for nonpartisan elections,¹ and provides in pertinent part:

A nominating petition shall be 8-½ inches by 14 inches in size. . . . The name, address, and party affiliation of the candidate and the office for which petitions are signed shall be printed in type not larger than 24-point. [Emphasis added.]

The Legislature’s use of the word “shall” is unambiguous and denotes mandatory action. *Wilcoxon*, 301 Mich App at 631; *STC Inc v Dep’t of Treasury*, 257 Mich App 528, 537; 669 NW2d 594 (2003). The nominating petition form under § 544c(1) includes a line designated for filling in the candidate’s “Street Address or Rural Route.”

Plaintiff’s nominating petition sheets that contain only his house number on the address line do not satisfy the address requirement. In *Stand Up for Democracy v Secretary of State*, 492 Mich 588; 822 NW2d 159 (2012), our Supreme Court interpreted MCL 168.482(2), governing the type size for referendum petitions. The Court held that because the statute “uses the mandatory term ‘shall’ and does not, by its plain terms, permit certification of deficient petitions with regard to form or content, . . . the doctrine of substantial compliance is inapplicable to referendum petitions submitted for certification.” *Id.* at 594. Similarly, MCL 168.544c(1) uses the word “shall” to mandate the content of a nominating petition to include the candidate’s address and does not expressly permit the certification of deficient petitions. The omission of plaintiff’s complete address on the nominating petition sheets rendered them defective and defendants had no legal duty to accept them for certification.

We reject plaintiff’s challenge to the Board’s authority to review the form and content of his nominating petition in the context of certifying nominating petitions. MCL 168.552(9) allows the Board “to consider any deficiency found on the face” of a petition, if doing so “does

¹ Circuit court judges are “nominated and elected at non-partisan elections in the circuit in which they reside[.]” Const 1963, art 6, § 12. MCL 168.544a provides that the form of nonpartisan nominating petitions shall be the same as the form for partisan nominating petitions under MCL 168.544c, except the petitions shall be designated “nonpartisan.” MCL 168.544c(1) prescribes the standards for petition size, form, and content for nominating petitions for partisan offices, and therefore for nonpartisan offices under § 544a.

not require verification against data maintained in the qualified voter file or in the voter registration files maintained by a city or township clerk.” In this case, the omission of part of plaintiff’s address from the nominating petition sheets was apparent on the face of the petition. Accordingly, under § 552(9), the Board was authorized to consider the deficiency. See also *Auto Club of Mich Comm for Lower Rates Now v Bd of State Canvassers (On Remand)*, 195 Mich App 613, 624; 491 NW2d 269 (1992) (“the Board of State Canvassers possesses the authority to consider questions of form, and thus issues other than whether there are sufficient valid signatures to qualify [an initiative petition] for certification[.]”)²

The omission of plaintiff’s complete address from two of the nominating petition sheets rendered those sheets invalid. The trial court did not abuse its discretion in denying the requested relief because plaintiff failed to establish entitlement to the certification of his nominating petition and a duty on the part of defendants to do so.

Affirmed. This opinion shall have immediate effect pursuant to MCR 7.215(F)(2).

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Michael J. Kelly

² Plaintiff cites *Deleeuw* for the proposition that the Board’s authority to review nominating petitions is limited to determining whether they contain enough valid signatures. His reliance on *Deleeuw* is misplaced. That case involved a challenge to nominating petitions based on alleged improper motives of the persons circulating the petitions. *Deleeuw*, 263 Mich App at 498-500. In that context, this Court stated that the Board’s duties under MCL 168.552(8) with regard to qualifying petitions is “sole[ly] . . . to determine whether the signatures on the petitions are valid, including those of the people who circulate the petitions, whether they are the signatures of registered voters, and whether there are sufficient valid signatures to certify the petitions.” *Id.* at 500-501. This Court observed: “There is nothing in the statute that would permit the board to look behind the signatures to determine the motives of the individual signatories or the motives or desires of the candidate.” *Id.* at 501. In contrast, here, the Board’s reason for rejecting the petition concerned a facial defect based on the absence of required information under MCL 168.544c.